

MARIO THOMAS,	)	
	)	
Plaintiff,	)	CASE NO. C09-252-RSM-JPD
	)	
v.	)	
	)	
ROCKY BRONKHORST,	)	REPORT AND RECOMMENDATION
	)	
Defendant.	)	
<hr/>	)	

Because plaintiff asserts claims under § 1983, the Washington statute of limitations governing personal injury actions applies. *See Wilson v. Garcia*, 471 U.S. 261 (1985). Accordingly, the applicable limitations period is three years. RCW 4.16.080(2). Although state law provides the

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1 applicable limitations period, federal law determines when the cause of action accrues. *See*  
2 *Tworivers v. Lewis*, 174 F.3d 987, 991 (9th Cir. 1998). And, “[u]nder federal law, a claim accrues  
3 when the plaintiff knows or has reason to know of the injury which is the basis of the action.” *Id.*

4 Plaintiff alleges that the search at issue occurred on January 5, 2006. The record reflects that  
5 plaintiff signed the instant civil rights complaint on February 20, 2009, and that it was received by  
6 the Court for filing on February 26, 2009, several weeks after the statute of limitations expired.  
7 Nothing in the record before this Court suggests that plaintiff is entitled to any tolling of the statute of  
8 limitations.<sup>1</sup> Accordingly, this Court recommends that plaintiff’s complaint and this action be  
9 dismissed with prejudice. A proposed order accompanies this Report and Recommendation.

10 DATED this 20th day of July, 2009.

11   
12 JAMES P. DONOHUE  
13 United States Magistrate Judge  
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21 <sup>1</sup> Defendant advises the Court in his reply brief in support of the motion to dismiss that a  
22 copy of the motion was sent to plaintiff at his last known address on May 8, 2009, but that the copy  
23 was returned to defendant’s counsel on May 29, 2009, and stamped “unclaimed.” The certification of  
24 service attached to defendant’s motion to dismiss reflects that the motion was sent to plaintiff at the  
25 address which is on record with the Court. Plaintiff has not advised the Court of any more current  
26 address as he is obligated to do under the local rules of this Court. Thus, even if the complaint were  
not clearly barred by the statute of limitations, it would be subject to dismissal pursuant to Local Rule  
41(b)(2) based upon plaintiff’s failure to prosecute.